

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

COMMISSIONS IMPORT EXPORT, S.A.,

Plaintiff,

v.

BANK OF UTAH, solely in its capacity as
Owner Trustee of the N887BA Trust, a Utah
Trust; EQUITORIAL CONGO AIRLINES,
S.A.; and REPUBLIC OF CONGO,

Defendants.

**MEMORANDUM DECISION AND
ORDER**

Case No. 1:16-CV-00151-BSJ

District Judge Bruce S. Jenkins

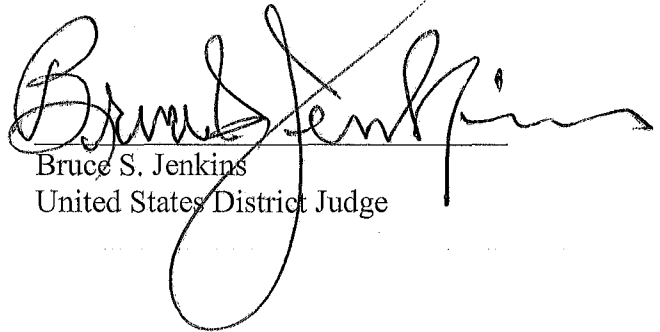
On January 13, 2017, Defendant Bank of Utah (“BOU”), solely in its capacity as Owner Trustee of the N887BA Trust, filed its Sealed Motion to Dismiss Plaintiff’s First Amended Complaint For Failure to Comply with Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). It filed a Memorandum in Support of the Motion (CM/ECF No. 39) (“Motion to Dismiss”) and other Defendants joined the Motion. Equatorial Congo Airlines, S.A. (“ECAir”) filed an Alternative Motion to Dismiss Plaintiff’s Complaint for Improper Venue Pursuant to Rule 12(b)(3) and Memorandum in Support of that Motion (CM/ECF No. 44). Plaintiff Commissions Import Export, S.A. (“Commissions”) filed a Memorandum in Opposition to BOU’s Motion to Dismiss on February 24, 2017 (CM/ECF No. 76). Defendant ECAir filed a Reply Memorandum in Support of the Motions to Dismiss Plaintiff’s First Amended Complaint for Failure to State a Claim and/or For Lack of Jurisdiction Pursuant to Federal Rules of Civil Procedure 12(b)(1) and/or (3) (CM/ECF No. 86). Defendant BOU filed a Reply Memorandum in Support of its Motion to Dismiss and Joined in Defendant ECAir’s Reply Memorandum in Support of Motion to Dismiss on March 9, 2017 (CM/ECF No. 87).

The Motion to Dismiss came before the court for a hearing on April 5, 2017. Matthew M. Cannon and Michael R. Johnson appeared on behalf of Plaintiff Commissions. Robert G. Barnes appeared on behalf of ECAir. Geoffrey K. Biehn appeared on behalf of Republic of Congo ("Congo"). Aaron D. Lebenta appeared on behalf of BOU.

Having considered the parties' briefs, the arguments of counsel, and the relevant law, the court hereby GRANTS Defendants' Motion to Dismiss because of failure to comply with Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). Plaintiff Commissions has failed to plead sufficient facts to state a plausible claim that ECAir is the alter ego of Congo and not a separate juridical entity.

For the limited reasons stated, the court GRANTS Defendants' Motion to Dismiss with leave for Plaintiff to amend within 10 days. The hearing set for April 21, 2017, at 10:00 AM to hear Plaintiff's Motion for Preliminary Injunction (CM/ECF No. 53) is vacated.

DATED this 12th day of April, 2017.


Bruce S. Jenkins
United States District Judge